

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
Charlotte Division**

In re:

BK Racing, LLC,

Debtor.

Case Number: 18-30241

Chapter 11

EX PARTE MOTION FOR ORDER SHORTENING NOTICE

Matthew W. Smith, the duly-appointed chapter 11 trustee (“Trustee”) for BK Racing, LLC (the “Debtor”), through counsel, hereby moves the Court pursuant to Rule 9006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Local Rules 9006-1(a) and 9013-1(f) of the Rules of Practice and Procedure of the United States Bankruptcy Court for the Western District of North Carolina (the “Local Rules”) for an order shortening notice on the *Request to Designate Ronald C. Devine under § 1126(e)* (the “Motion”) (Doc. No. 392) filed on January 22, 2020, and in support respectfully represents as follows:

1. On February 15, 2018, the Debtor filed its voluntary petition for relief pursuant to chapter 11 of the Bankruptcy Code, initiating the above-referenced bankruptcy case.

2. On March 30, 2018, upon the request of Atlantic Union Bank f/k/a Union Bank & Trust (the “Bank”) and without objection from the IRS, the Court entered an Order appointing the Trustee in this Case. (D.E. 87).

3. On August 3, 2018, Ronald C. Devine (“Devine”) filed Claim No. 44 (the “Devine Claim”) asserting a secured claim against the Debtor’s estate and attaching apparent loan documents between the Debtor and Virginia Racers Group, LLC (“VRG”). The Devine Claim attaches no documents evidencing a debt owed by the Debtor in favor of Devine personally, nor does the Devine Claim provide any proof of the amounts extended by VRG that would support a claim for \$15,000,000.

4. Because there are senior liens in favor of the Bank and the IRS that exceed the value of the Debtor’s assets, the Devine Claim, or any other claim that Devine may have against the Debtor’s bankruptcy estate, would be an unsecured claim.

5. On December 13, 2019, the Trustee filed his proposed Chapter 11 Plan, which Plan was amended on December 16, 2019. (D.E. 362).

6. Pursuant to the *Order Approving Disclosure Statement—On a Conditional Basis Only—and Fixing Time for Filing Acceptances or Rejections of Plan, Combined with Notice Thereof* entered on December 17, 2019 (D.E. 366), the deadline for filing written acceptances or rejections of the Plan was fixed as January 21, 2020 (the “Ballot Deadline”).

7. On January 20, 2020, Devine emailed the Trustee's counsel a ballot rejecting the Plan, listing a claim amount of \$17,000,000.00 (the "Devine Ballot").

8. The hearing on confirmation of the Plan is scheduled for January 28, 2020.

9. On January 22, 2020, the Trustee filed the Motion seeking an Order designating Devine as an entity that cast a ballot in bad faith. A notice of hearing accompanied the Motion, indicating a hearing date of January 28, 2020 at 9:30 a.m. Service of the Motion was made through email on Devine and the attorney for VRG, as well as by United States Mail.

10. Because the Devine Ballot reflects a rejection of the Plan, it is critical to Plan confirmation that the Court hear the Motion prior to ruling on confirmation of the Plan. Accordingly, the Trustee maintains that there is good cause to shorten the notice period relative to the Motion.

11. For these reasons, the Trustee seeks entry of an order shortening notice on the Motion such that the same may be heard in connection with Plan confirmation on January 28, 2020.

WHEREFORE, the Trustee prays that the Court will enter an order shortening notice on the Motion such that it may be heard on January 28, 2020 in connection with the scheduled hearing on Plan confirmation and granting such other relief as may be just and proper.

This is the 23rd day of January, 2020.

/s/ A. Cotten Wright

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